



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Human Rights' monitoring and implementation

Citation for published version:

Gadda, A, Harris, J, Tisdall, EKM, Millership, E & Kilkelly, U 2019, 'Human Rights' monitoring and implementation: How to make rights 'real' in children's lives', *The International Journal of Human Rights*, vol. 23, no. 3, pp. 317-322. <https://doi.org/10.1080/13642987.2018.1558972>

Digital Object Identifier (DOI):

[10.1080/13642987.2018.1558972](https://doi.org/10.1080/13642987.2018.1558972)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

The International Journal of Human Rights

Publisher Rights Statement:

This is an Accepted Manuscript of an article published by Taylor & Francis in The International Journal of Human Rights on 16/03/2019, available online: <https://www.tandfonline.com/doi/full/10.1080/13642987.2018.1558972>.

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Editorial

Human Rights’ Monitoring and Implementation: how to make rights ‘real’ in children’s lives

Author details:

A.M. Gadda, Head of Policy and Research, Scottish Child Abuse Inquiry, PO BOX 24085, Edinburgh, EH7 9EA, Andressa.Gadda@childabuseinquiry.scot, @agadda, ORCID ID: 0000-0001-9510-8804

Juliet Harris, Director of Together (Scottish Alliance for Children’s Rights), Rosebery House, 9 Haymarket Terrace, EH12 5EZ, +44 131 337 9015

E. Kay M. Tisdall, Professor of Childhood Policy University of Edinburgh, Moray House School of Education, Childhood & Youth Studies Research Group, St John’s Land Holyrood Edinburgh EH8 8AQ UK, +44 131 650 3930 K.Tisdall@ed.ac.uk ORCID number 0000-0001-8967-6426

Elizabeth Millership, Policy and Communications Officer for Together (Scottish Alliance for Children’s Rights), Rosebery House, 9 Haymarket Terrace, EH12 5EZ, +44 131 337 9015

Ursula Kilkelly, Professor of Law, School of Law, University College Cork. ORCID ID: 0000-0002-2855-6911

Funding details:

This work was supported by the Scottish Universities Insight Institute seminar series.

Disclosure statement:

There is no financial interest nor benefit that has arisen from the direct applications of the research for this article.

Biographical note:

Andressa Gadda has worked as a researcher in the field of child care and protection for over 10 years. Most recently she was a Research Fellow at the Centre for Child Wellbeing and Protection (CCWP) at the University of Stirling. She is currently the Head of Policy and Research at the Scottish Child Abuse Inquiry (SCAI).

Juliet Harris is the Director of [Together \(Scottish Alliance for Children's Rights\)](#) and leads the organisation in promoting and monitoring the implementation of the UN Convention on the Rights of the Child (UNCRC) across Scotland. This includes working with Together's membership of over 380 children's organisations and professionals to produce an annual State of Children's Rights report, as well as liaising with government and parliamentarians to further children's rights in legislation, policy and practice. Juliet's previous experience includes six years tackling the destitution and poverty of refugees and asylum seekers, alongside a number of roles with charities working in the field of health and homelessness.

E. Kay M. Tisdall is Professor of Childhood Policy at the University of Edinburgh. She has a long-standing interest in children and young people's participation, from her policy and research work.

Elizabeth Millership has held various children's rights roles in policy, research and consultancy including a long-standing association with Together.

Ursula Kilkelly is a professor of law working in the field of children's rights. She has published in the leading journals on the area of children's rights implementation and undertaken funded research for the Council of Europe, national bodies like the Ombudsman for Children and UNICEF UK. She is currently co-editor of *Youth Justice: An International Journal*.

Abstract

The UN Convention on the Rights of the Child (UNCRC) is the most ratified international human rights treaty. Yet problems continue about ensuring that children's rights are recognised and supported in their daily lives. To this end, informal and formal efforts have been made for greater incorporation of the UNCRC into national law and policies. This special journal issue learns from these latest efforts, for the benefit of all human rights advocates in policy, practice and academia. The editorial outlines the contributions from eight articles, which were written by young people, practitioners who are directly influencing policy and practice, and academics from across the UK, Canada and Ireland with both national and international expertise. Written from different disciplines (including law, public policy and education), the special journal issue aims to enhance the critical evidence and strategic approach to implementing human rights in practice.

Keywords: children's rights; UN Convention on the Rights of the Child; implementation; monitoring; incorporation

The United Nations Convention on the Rights of the Child (UNCRC) is now almost 30 years old. Adopted by the General Assembly of the United Nations in 1989, strong support meant that it quickly became a widely ratified international treaty. As the Convention became the touchstone for children's rights around the world, the Committee on the Rights of the Child, the treaty body that has responsibility for monitoring its implementation, set out its

expectations on States parties with regard to general measures of implementation. In particular, in General Comment No 5,¹ adopted in 2003, the Committee explained that both legal and non-legal measures were essential to achieve full implementation, identified incorporation of the Convention into the national legal system as the high water mark of implementation, while highlighting the importance of simultaneously taking non-legal measures (e.g. a national strategy, a national children's commissioner, improved data collection and training of professionals and systems for child budgets and impact assessment) to embed the Convention into national decision-making systems. In the 25 years since the adoption of General Comment No 5, States parties have adopted a variety of non-legal measures of implementation, and in recent years the emphasis appears to have shifted to legal implementation. While some States parties have taken innovative measures of 'indirect incorporation', such as requiring that regard be had to the Convention in parliamentary or law making processes, others have begun to incorporate the Convention into their domestic legal systems, by taking measures that give the Convention, or certain of its provisions, the standing of constitutional law or legislation.

Research has begun to document the variety of approaches to implementation being taken by States parties to the Convention and this has helped to increase international awareness about the merits of individual approaches. This Special Issue, 'Human Rights' Monitoring and Implementation: how to make rights 'real' in children's lives', builds on this principle that documenting and analysing the approaches of States parties to implementation is not only important from an academic perspective, but can also serve as an effective advocacy tool around Convention implementation for use by civil society groups, young people and other interested parties. The Special Issue has its origins in a campaign initiated in Scotland in 2016 by the children rights' alliance Together, which published a *State of Children's Rights in Scotland*. This report provides a baseline against which progress in implementing

recommendations made by the UN Committee on the Rights of the Child could be measured. Whilst reflecting on progress made to implement the UNCRC across Scotland, the report identified common widespread failures to respect, protect and fulfil children's rights, from local and national weaknesses in children and young people's participation to significant gaps in children's legal protection in criminal law. Arising out of this report, a decision was made to convene a seminar series - The 'UNCRC in Scotland' in February to June 2017 – to improve and address such gaps in the implementation and monitoring of the UNCRC through an examination of children's human rights in law, practice and policy and the identification of next steps for implementation. Together joined with the Centre for Research on Families and Relationships ([CRFR](#)) at the University of Edinburgh, and the Centre for Child Wellbeing and Protection ([CCWP](#)) at the University of Stirling to combine academic, public sector and civil society resources. A focus on national and international comparisons and learning was built into each seminar to ensure best practice was highlighted and used to inform key messages. Participants were engaged from a wide range of fields including academia, the public sector, the third sector, the Commissioner for Children & Young People in Scotland, and several sessions were led by children and young people themselves. The series resulted in a significant strengthening of relationships with key partners in government, academic institutions and Parliamentary research teams whilst the seminar series briefings, blogs and summaries were widely read. A creative project was undertaken with a local primary school to visually depict the key findings across children's rights in law, practice, policy and the future in a large-scale mural, subsequently displayed in the Scottish Parliament building.²

Following the seminar series, this high level of engagement with multiple key players and institutions demonstrated a clear need to gather the series findings in a format that would explore and articulate in more depth each of the seminars key themes. These key themes and

findings have now been captured in this special journal issue, which includes contributions from the seminar's main speakers.

Since the seminar series came to an end, children's human rights have continued to garner wider interest and support at a civil society level and governmental level. In June 2017, following a consultation with more than 5,000 young people across Scotland, Members of the Scottish Youth Parliament (MSYPs) voted to focus all their efforts on the rights of young people. Their subsequent campaign, *Right Here, Right Now*,³ aims to ensure that Scotland's young people are aware of and understand their own rights, and are empowered to take action to defend their own rights and those of others. The campaign specifically makes a call for the incorporation of the UNCRC into Scots law.

Politically in Scotland, momentum around implementation of the UNCRC has been growing. The 2017-18 Programme for Government⁴ included several positive commitments to children's rights, a number of which specifically take forward recommendations from the UN Committee on the Rights of the Child. These included an express commitment to support legislative proposals that give children equal protection from assault and increasing the age of criminal responsibility from 8 to 12 years-old. In both of these areas, Scotland has been repeatedly criticised by UN treaty bodies. The Programme for Government also included a commitment to undertake a comprehensive audit ('the CRC Audit') on the most practical and effective way to further embed the principles of the UNCRC into policy and legislation, including the option of full incorporation into domestic law, as well as setting up an independent Advisory Group on Human Rights Leadership tasked with making recommendations on how Scotland can lead by example in the field of human rights, specifically on economic, social, cultural and environmental rights. The year of 2018 was designated the Year of Young People (aged 8 to

26) as a celebration of Scotland's young people and a focus on their participation in decision-making.⁵

The CRC Audit has been advanced through the more recent 2018-19 Programme for Government,⁶ which includes a commitment to incorporate the principles of the UNCRC into domestic law. In making this commitment, the Scottish Government refers to “different ways to achieve this” and with reference to “particular complexities in relation to the UNCRC which require to be worked through”. The Scottish Government states that it will “consider where it may be possible for Scots law to go further than the Convention requires”.

It is clear therefore that momentum in Scotland has been building towards incorporation of the UNCRC. In just a few years, Scotland has emerged with the potential to become an international leader in children's rights through incorporation of the UNCRC. In order to translate this political will into action and to ensure that the preferred model of incorporation best meets Scotland's needs and circumstances, it is important to bring the weight of international evidence and experience in effective implementation of the UNCRC to bear on the debate and determination of these issues. Equally, a critical consideration of progress, barriers and opportunities in Scotland are of interest to the international community committed to realising human rights in domestic law and practices.

To this end, the special journal issue contains eight contributions, from a range of authors and perspectives. Authors include young people, who took a leading role in the seminar series, practitioners who are directly influencing policy and practice, and academics from across the UK, Canada and Ireland with both national and international expertise. Similarly, the articles

come from different disciplinary bases, including law, public policy and education for example, bringing different perspectives to bear on the central themes of the Special Issue.

The first three articles provide analyses, with cross-national comparisons of approaches to implementation of the UNCRC. Kilkelly's article, 'The UN Convention on the Rights of the Child: Incremental and Transformative approaches to Legal Implementation' maps out and interrogates the different legal and non-legal measures to embed the UNCRC in national law, policy and practice. Informed by multi-jurisdictional studies, Kilkelly concludes that, while legislative incorporation can be truly transformative, the graduated approach (whereby non-legal measures are prioritised) can be highly useful to build momentum and social change. Collins picks up the discussion of non-legal measures in her article, 'The General Measures of Implementation: Opportunities for progress with children's rights'. She charts the precise requirements of these measures, as set out by human rights institutions, and discusses how they have been implemented in various parts of the world. Her article emphasises the need for multiple actors to be involved, including children and young people, going beyond the 'usual suspects' to include the general public, businesses and the media. The article highlights the importance of non-legal measures like: education, awareness and training; monitoring; budgeting; coordination; and plans of action. Budgeting is also a key concern for Byrne and Lundy's article, as one of the 6 Ps they have identified for a children's rights-based policy. The other Ps are principles, processes, partnership, participation and publicity. Their article, 'Children's Rights-Based Childhood Policy: A Six 'P' Framework', uses a range of research studies and policy experience to argue that a rights-based approach to policy requires attention to process as well as children's outcomes and to substantive rights as well the CRC's general principles. Together, these articles provide an informed, supportive if ambitious blueprint for how best to realise children's rights at national levels.

The next two articles, ‘The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales’ (Hoffman) and ‘“Making Children’s Rights Real’: Lessons from Policy Networks and Contribution Analysis’ (Gadda, Harris, Tisdall and Millership), both use particular examples of UNCRC policy development to consider critically the ‘levers of change’ and how best to realise children’s rights. Hoffman explores Welsh legislation and policy, recognised by other articles in the Special Issue as a leading example of incorporating the UNCRC. He argues for legislation to frame the policy environment, so that policy-decision making is undertaken within a human rights (in this case children’s human rights) framework. While potentially useful for all jurisdictions, such framing may be particularly appropriate for decentralised governments or jurisdictions who do not themselves have competence to ratify the UNCRC. Gadda and colleagues then consider recent Scottish policy developments in relation to children’s rights. The article capitalises on resources from policy networks literature and contribution analysis to consider how and why certain advocacy was more or less successful in recent parliamentary and governmental developments. It concludes that rights advocacy would be well advised to develop a theory of change with and across policy actors, so such advocacy can be monitored, modified and improved. Payne’s article also picks a particular policy development, i.e. rights impact assessments for children. Building on her considerable experience of developing such assessments, her article ‘Child Rights Impact Assessment (CRIA) as a Policy Improvement Tool’ considers issues that limit its effectiveness and suggests what is needed to maximise the potential of CRIA. Together, these articles provide detailed recommendations on how children’s rights can best be realised in governance and policy, written by those at the ‘cutting-edge’ of these developments.

McCall-Smith's article is placed at the end of the formal articles, with the provocative title 'To incorporate the CRC or not – is this really the question?' The article picks up several of the issues discussed in other articles, such as the relative merits of legal and non-legal measures to help ensuring children's rights are realised. The article helpfully delineates terminology, suggesting clarity is required between terms commonly used but rarely defined, namely: implementation, incorporation, direct application and enforceability. By using a range of examples from around the world, she reinforces that national and local approaches to implementation must take internal politics and procedures into account. Picking up on a theme discussed throughout the articles, McCall-Smith emphasises the range of measures and actors needed to realise human rights – and not solely a narrow promotion of legal incorporation.

The final contribution in the Special Issue comes from two young people who were key contributors to the seminar series. Meekison and Wan were amongst the young people who came to every seminar, reporting on their impressions and conclusions during each seminar as part of the podcast series, chairing parts of the seminars and linking with the children and the Children's Parliament to produce the mural. They have summarised their learning from the seminar series with their proposed agenda for children and young people's rights in Scotland and beyond, with their article 'A Young Person's Guide to Defending Human Rights'.

The Special Issue, 'Human Rights' Monitoring and Implementation: how to make rights 'real' in children's lives', thus brings together in one volume international research and experience of implementation of the UNCRC written from different perspectives, for a diverse audience of academia and activists alike. Informative, comprehensive and challenging, as editors and authors it is our view that the analysis contained here should stimulate greater academic

discussion of the different approaches that can be taken to the protection of children's rights at a national level. It is also our hope that in bringing this diversity of expertise and experience on children's rights implementation in one place, the volume will have practical importance also, as a guide to inform effective advocacy and political decision-making around the UNCRC and other human rights treaties.

Andressa Gadda

Juliet Harris

Ursula Kilkelly

Liz Millership

Kay Tisdall

¹ UN Committee, *General Comment No. 5, General Measures of Implementation for the Convention on the Rights of the Child*, (Geneva: 3 October, 2003).

² For further information about the seminar series and its outputs, see <https://www.togetherscotland.org.uk/resources-and-networks/uncrc-in-scotland-seminar-series/>

³ For further information about this campaign, see https://www.syp.org.uk/right_here_right_now

⁴ Scottish Government, *A nation with ambition* (2017): 14, <http://www.gov.scot/Publications/2017/09/8468>

⁵ For further information, see <https://yoyp2018.scot/>

⁶ Scottish Government, *Delivering for Today, Investing for Tomorrow* (2018): 83, <https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539972->